of the acts of either party; where a trial judge has apportioned liability accordingly, his apportionment should not be interfered with on appeal, save in exceptional cases (as where there is some error in principle) or the apportionment is clearly erroneous, and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial judge.

A like principle governs the intervention of an appellate court on appeal on quantum of damages."

I do not consider that the present case is exceptional or one where there is an error in principle. In the circumstances I decline to review the apportionment made by the learned trial judge.

I would therefore dismiss the appeal with costs.

Suffian and Gill F.JJ. concurred.

Appeal dismissed.

Solicitors: *Joseph & Son; D.A. Devadason.*

YEOW TIONG KOK v. COLLECTOR OF LAND REVENUE, PORT DICKSON

[F.C. (Azmi L.P., Ong Hock Thye C.J. (Malaya) & Suffian F.J.) September 19, 1969]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 18 of 1968]

Land Laws — Acquisition of land — Award of collector based on report of valuer — Market value — Comparative method of valuation — Land Acquisition Act, 1960.

In this case the collector had given an award of $87,625 for resumption by the State Government of certain land on the Port Dickson — Seremban main road. The collector had based his award on the recommendation of the valuation officer, an official of the Treasury Valuation Department. There were comparative sales of land but these were ignored by the valuer. On reference to the High Court, the award of the collector was affirmed. On appeal,

Held: (1) the learned judge in this case had leaned too heavily on the opinion of the valuer as did the assessors also in rejecting the comparable sales;

(2) in the circumstances the valuation of the valuer in this case was erroneous and therefore the collector's award and the judgment of the High Court affirming it should be set aside.

Cases referred to:—

(1) *Chuah Say Hai* v. *C.L.R. Kuala Lumpur* [1967] 2 M.L.J. 99, 100-1.

(2) *Aik Hoe & Co. Ltd.* v. *Superintendent of Lands & Surveys* [1968] 1 M.L.J. 293.

FEDERAL COURT

Ng Ek Teong (*Lee Boon Peng* and *Vincent Ponniah* with him) for the appellant.

Hassan bin Ishak (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Ong Hock Thye C.J. (Malaya): This is an appeal from the decision of the High Court at Seremban, upon a reference under section 37 of the Land Acquisition Act, 1960, affirming an award of $87,625 by the Collector of Land Revenue for resumption by the State Government of a parcel of land 179,946 square feet in area. The appellant, who was the proprietor, claims that the market value of his land at the relevant date, June 16, 1966, was $2 per square foot. It was valued by the collector at approximately 46 cents per square foot.

The land is Lot 1685 situate within the Port Dickson Town Boundary, on the Port Dickson-Seremban main road, about one mile from the town centre. It enjoys the benefit of a road frontage of 325 feet along this main highway and a return frontage of 625 feet along a new access road running in an easterly direction from the main road. The surface is level generally, of the same height as the main road. Water and light are available and laid on to a semi-permanent dwelling-house thereon. There were no implied or express conditions on the title to impede development of this property. The premium required for conversion of agricultural land would be $5,000 per acre, otherwise payable, but not in this case.

Notice of intention to acquire this land was published in the *Gazette* on June 16, 1966 which became the relevant date for assessment of its market value. On August 26, 1966, the Collector of Land Revenue, Port Dickson, held an inquiry and on the same day made his award, assessing the compensation at $87,625, or $20,000 per acre. Evidence was produced at this inquiry that the appellant had purchased the land on May 11, 1966 for $359,914, at the rate of $2 per square foot. The collector, however, based his award "on the recommendation of the valuation officer", an official of the Treasury Valuation Department. This collector, who had come to Port Dickson as recently as March 1966, frankly admitted that he had no idea of local land values but relied entirely on the valuer's report. He did not make an independent valuation: as he put it, "What the valuer says is good enough for me as he is an expert".

The report referred to is Exhibit R.25. Of the appellant's purchase the valuer had this to say:—

"The present owner bought the land under valuation i.e. Lot 1685 together with Lot 1687 on 11.5.1966 for $359,914 i.e. approximately $85,450 per acre or about $2 per foot super. . . . I understand that the two parties are brothers and as such the conveyance cannot be considered as a *bona fide* sale and were (*sic*) merely arranged by the two parties, fearing that the land might be compulsorily acquired by the National Electricity Board or the proposal to acquire this land for the school might have leaked out before *Gazette* notification."

It is thus clear that the previous sale of the same land was disregarded as any index of

market value on the ground that there was believed to be collusion between the appellant and his brother. This was the central issue in the reference to the High Court. The learned judge agreed with the assessors that it was not a *bona fide* transaction. Rejecting this sale as evidence of market value, the rest of the appellant's evidence would appear to have been regarded as tainted. In the result the expert opinion of the Treasury valuer was accepted with hardly any question.

The issue now before this court is whether, leaving aside the sale of Lot 1685 itself, the remainder of the evidence adduced on both sides supports a valuation of $2 per square foot or $20,000 per acre — equivalent to approximately 46 cents per square foot — and if neither, what should be the proper assessment of its market price.

I shall deal first with the case of the appellant. He had told the court of his not inconsiderable activities as a property developer. As regards Lot 1685 in particular, he stated that he became interested in this property in 1965, as it was vacant land and the nearest to the town which was available. He obtained from his brother an option of purchase at $1.30 per square foot. Having come to know of the proposed power station and the National Electricity Board's interest in Lot 1685, he made an offer to the board which, after protracted negotiations, was turned down on November 15, 1965. The board's counter-offer, by letter of August 5, 1965 had been $14,600 per acre, approximately a quarter of the price asked for. On August 16, 1965 the board rejected a re-offer, at the price of $1.10 per square foot, and reiterated their counter-offer of $14,600, with an intimation that the board would "take this matter up with the Collector of Land Revenue with a view to compulsory acquisition of the land should our negotiations for purchase fail." On October 19, 1965 the board informed the appellant's solicitors that they were resorting to compulsory acquisition and, by letter of the same date to the collector, requested him to take steps to do so. On November 1, 1965 the appellant replied to the board that his offer, now raised back to $1.30 per square foot by reason of changed circumstances, would only hold good until approval of his application for sub-division, when it would have to be revised. To this the board's answer of November 15, 1965 by its secretary was that the board had reconsidered its land requirements at Port Dickson and "does not now wish to purchase Lot 1685" (see Exhibit O.2). According to Mr. Sivapragasam, the board's assistant secretary, this was followed by a letter to the collector requesting that acquisition proceedings be dropped.

Such was the state of affairs when the appellant on April 2, 1966 entered into an agreement in writing with Yeow Nee, his brother, whereby, in consideration of a cash payment of $59,914 made to the latter, the appellant was to purchase Lot 1685 at the price of $359,914 and, in respect of the balance of $300,000, the vendor was to be given an I.O.U., to be settled by a transfer to him of four newly-built houses on Lot 491, valued at $112,000 as soon as qualified titles to them were issued by the Government, while payment of the balance of $188,000 was to be made "within one year after the Government's approval of sub-division of Lot 1685".

Pursuant to this agreement, which was produced as Exhibits O.5 and 5A (the translation), the appellant testified that he had paid $59,914 as agreed, and the transfer to him of Lot 1685 was duly registered on May 11, 1966 (*vide* Exhibit O.8). In reduction of his liability he had, pursuant to the agreement, also transferred four houses on Lot 491, leaving a balance of $188,000 which he had not yet paid by reason of the Government having acquired Lot 1685. He had since received a notice of demand (Exhibit O.6) dated June 16, 1967 from his brother, to which his reply was, "If the Government approves (the sub-division) I would have to pay the sum of $188,000".

In view of this interpretation of the agreement by the appellant himself as to his liability for the unpaid balance, it is not surprising that the judge said, "I cannot in the circumstances accept the agreement made on 2nd April 1966 as a *bona fide* transaction". Normally, he agreed, the sale price of the same property should be the best index of the market value, citing Gill J. in *Chuah Say Hai v. C.L.R., Kuala Lumpur.*[1] Here, however, he thought the sale was "not as clear-cut as it should be . . . This is, to my mind, a family arrangement entered into with a view to creating a standard of value because of the probability of a compulsory acquisition of the land".

For my part I incline also to the view that this was a family arrangement, whether or not there was any ulterior motive behind it. It might be that it was never the intention of the parties that the appellant should be able to play fast and loose with regard to payment of the balance of $188,000. Nevertheless, about this stipulation there was a degree of vagueness which certainly stamps the agreement as rather unusual. Payment "on easy terms" as provided in the agreement, therefore, negates this sale as evidence of market value. On this point I am in full agreement with the learned judge.

However, assuming even the worst against the appellant with regard to this transaction, it

was still necessary to consider the remainder of the evidence which he had produced in support of his case. As evidence of current market value, he had produced an agreement dated June 19, 1966 made with a Malay lady, administratrix of an estate, for the purchase by himself of Lot 922, containing an area of 4.662 acres, at the price of $175,000, or approximately 86 cents per square foot. Registration of this transfer was held up for some months, but the delay was due to the vendor having to apply for an order of court, as provided in the agreement (Exhibit O.16). The genuineness of this transaction was never impugned. Of this the learned judge said:—

"It was purchased by the objector on 19th June 1966 at the price of about $40,000 an acre. The transfer was registered on 8th April 1967. It is within the Town Board area. In his evidence the objector described the disadvantages of his lot from the point of view of development. There was a monsoon drain 400 feet long and 60 feet wide which overflows during heavy rain and at high tide, and the Government would be requiring a strip 40 feet wide for the purpose of straightening the road. The objector appeared over-anxious to emphasise the unsatisfactory features of this lot for development purposes. It is difficult to understand why a shrewd developer should be interested in the lot. In any event, he has not disclosed why he purchased it."

It seems to me that, having been disbelieved regarding Lot 1685, distrust of the appellant had spread over to his evidence concerning this other transaction. I do not think, however, that the purchase of Lot 922 should have been tarred with the same brush along with Lot 1685. The simple answer is that, notwithstanding the drawbacks he dilated upon, the fact remains that he was still willing to pay the price demanded which he, as "a shrewd developer", considered it to his own advantage to accept. The reason for his purchase being plain enough, explanation was supererogatory. In holding this sale to be "of no assistance" the judge must have lost sight of the evidence given by Mr. Francis Lingam, the collector, as follows:—

"I went with the court and parties on inspection this morning. Lot 922 is not comparable with Lot 1685. Lot 1685 is more valuable. If in June 1966 Lot 922 is valued at 90 cents a square foot, Lot 1685 would cost more. When I accepted the value of 50 cents per square foot for Lot 1685 I did not know about Lot 922."

This categorical statement he, the respondent, never modified, nor in view thereof, was he asked by the learned State Legal Adviser to explain or justify his award of 46 cents per square foot for Lot 1685. Not even in this court has it been suggested that the sale price of Lot 922 was not a true reflection of market value. In my opinion, therefore, the learned judge was wrong, for the reason he gave, in dismissing the above sale as irrelevant. The question may be asked: If Lot 922, with its disadvantages as described without contradiction, fetched in open market a price of approximately $40,000 per acre between a willing vendor and a willing purchaser, on June 19, 1966, should comparable land of undeniably better quality be fairly assessed at $20,000 per acre, when compulsorily acquired on June 16, 1966? It could not be said, as was said of the purchase of Lot 1685, that here again the purchase of Lot 922 was a move calculated to bolster up the compensation for acquisition of Lot 1685.

Accordingly, the sale price of Lot 922 alone should have sufficed to demolish the respondent's award, as providing irrefutable evidence that it was wrong. Since the judgment avowedly upheld the award both must stand or fall together.

Besides Lot 922, the appellant was relying on certain other purchases made by the National Electricity Board, two of which related to land in the closest vicinity to Lot 1685, namely, Lots 2187 and 826, while the third, Lot No. 801, otherwise comparable, was some distance from Lot 1685. The evidential value of these three purchases was, however, discounted by the valuer as irrelevant. Speaking of the latter's valuation of Lots 801, 2187 and 826, Mr. Sivapragasam, the assistant secretary of the board, said as follows:—

"In respect of these 3 lots we could not get a willing seller at the Treasury valuer's figure. We did not accept the valuer's report in respect of these 3 lots. For a period of three years we could not get a seller at the Treasury valuer's figure."

In the first instance, Lot 801, of 11.475 acres, was purchased by the board on October 29, 1964 at the price of $25,000 per acre. No Treasury valuation had been obtained. Next, on March 30, 1966 the board, just as willingly, paid $35,000 per acre for the 3.537 acres of Lot 2187. "We have Treasury valuation for Lot 2187 on 4.1.67 at $12,600 per acre; Treasury valuation at $10,000 per acre for Lot 826. As to Lot 1685 Treasury valuation was obtained in May 1965, $14,600 per acre", so deposed Mr. Sivapragasam. Subsequently, on April 3, 1967 the board purchased Lot 826 and again willingly paid $35,000 for each of its 8.8812 acres, ignoring the valuer's opinion. Both Lots 2187 and 826, for which the higher prices were paid, are not town land, like Lot 1685, and on that account a premium of $5,000 would have to be added to the price per acre for rescission of agricultural conditions not applicable to either Lot 801 or Lot 1685. Lot 801 was bought in 1964 at the lowest price of all, $25,000 per acre, during the height of the Indonesian confrontation.

On January 9, 1963, three and a half years earlier, there was evidence that Shell Company had willingly paid as much as $26,136 per acre to purchase Lot 1309, in area 2.4 acres. This transaction, likewise, was dismissed by the valuer as irrelevant, on the ground that Shell

Company normally paid a high price for land and he did not consider it represented the "fair market value". What its market value was, he did not choose to say.

I turn now to the grounds stated by the Treasury valuer for his opinion. It will readily be seen in the Town Plan (Exhibit O.1) that Lots 801, 2187 and 826 afford, on a practical commonsense view, useful data for comparison with Lot 1685. Both Lot 2187 and Lot 826 are situate in the closest vicinity to Lot 1685, but clearly of less market value by reason of having no main road frontage and being outside Town board limits. Yet, of them the valuer said: *"I did not take consideration in my report the price paid by the N.E.B. in respect of Lots 801, 286 and 2187"*. As regards Lots 2187 and 801 he gave the following reasons:—

"I have ignored the sale of Lot 2187 and Lot 801 . . . for the purpose of this valuation. In the case of Lot 2187 the National Electricity Board referred the case to me for valuation and advice before making the purchase. The price recommended by the Treasury valuation division was $12,600 per acre and I do not know the reasons behind it for the board's decision to pay nearly 3 times more than the recommendation of the valuation division for the purchase of this lot. In the case of Lot 801 I consider the price paid by the N.E.B. at $25,000 per acre to be very much on the high side as the previous conveyance of the same land about 18 days earlier was at $9,500 per acre. This clearly indicates that the N.E.B. did not seek the expert advice of a valuer in order to find out the fair market value of the land in the area before making the purchase."

I do not think the valuer's opinion about Lot 801 can stand up to any critical examination. He knew only the bare facts revealed by the transfer and retransfer 18 days later. He made no further inquiry or investigation, notwithstanding that any other investigator should have felt compelled to seek an explanation. The disparity in price in 18 days was certainly striking, probably indicative of sharp practice. But the fact that $9,500 per acre was far below market price does not necessarily mean that the $25,000 per acre paid by the board could not be a true reflection of market value. What if the original vendor was an illiterate recluse, ignorant of market value, and advantage had been taken of him? Several reasonable and probable hypotheses are readily imaginable which cannot detract from the usefulness of the resale to the board as evidence of the market value of Lot 801. The board's purchase was clearly a transaction between equals in which neither party could have taken any unfair advantage of the other. Hence, the valuer should not have brushed aside this sale as irrelevant.

I am not at all sure that this valuation expert really understood the meaning of "market value" as the price which a willing vendor might reasonably expect to obtain from a willing purchaser. Fixing a price acceptable only to the purchaser is not an assessment of market value. Thus, for three years, Mr. Sivapragasam said, the board had been unable to find any willing seller at this Treasury valuer's assessment of what he terms "fair market value". In all his recommendations, therefore, it would appear that the least of his concerns was to ascertain the price acceptable to the landowner intended to be dispossessed. He had never been in private practice, viewing his task from the standpoint of his client. His entire career had been in the Treasury.

In respect of Lot 801 and Lot 2187, I can discern no valid reason for his ignoring those sales, nor that of Lot 806, of which he made no mention. He was, strangely enough, despite his researches, unaware or heedless of the contemporaneous sale of Lot 922. Shell's purchase in 1963 of Lot 1309 at over $26,000 per acre was dismissed in summary fashion. Instead of all these valid comparables, his own choice fell on Lots 1751 and 533, though they are nowhere in the vicinity of Lot 1685, being 3 miles distant, and the sales thereof, on September 12, 1964 and January 24, 1964 respectively, were less proximate in point of time than all the cases he had chosen to ignore. The learned judge, consequently, considered these two selected sales irrelevant and I entirely agree.

As regards Lots 2187, 826 and 801 the judge expressed his opinion that, *prima facie*, the sales of these three lots appeared to afford a fair basis of comparison. Nevertheless, he rejected these sales on the ground that "what must detract from their value as a guide are the circumstances leading to their purchase" by the board, as follows:—

"On 16th July, 1964, appeared a *Gazette* notification that land was likely to be needed for a power station. According to Mr. Sivapragasam, secretary of the board, because of the proposal to erect a power station it was necessary to have land for quarters for the large staff of the N.E.B. at Port Dickson. In October, 1964, the board purchased Lot 801, in April, 1966 Lot 2187, and in April, 1967, Lot 826. Lot 826 was bought for the purpose of the N.E.B. transmission lines. The board could have resorted to section 53 of the Electricity Ordinance but it seems that that would have involved delay, and it was therefore necessary to get possession of the land as soon as possible. It also appears that in the case of the other two lots the course taken in purchasing them in preference to acquisition under the provisions of the Land Acquisition Act was dictated by the need to get them in time to enable the board to prepare the construction programme for staff quarters. Section 19 of the Act contains provisions designed to meet such urgent cases. I am therefore not impressed by the reasons given for the failure to have recourse to these provisions. Be that as it may, because of this element of compulsion, the sales of these lands cannot be regarded as comparables."

Section 19, as the learned judge himself pointed out, was a complete answer to the plea of urgency put forward by Mr. Sivapragasam. It reads as follows:—

"(1) Where any country land or arable land or unoccupied land, described in any notice in Form E given under section 10, is in the opinion of the State Authority urgently required for use for the public purpose the commissioner may, on or after the expiration of fifteen days from the date of the giving of such notice, issue a certificate of urgency directing the collector to take possession of such land, subject to the provisions of section 20."

That the board knew of the rising costs of land appears from the following evidence of Mr. Sivapragasam:—

"In view of the status of Port Dickson at that time with two oil refineries already in operation, and the knowledge that the N.E.B. would be putting up a new power station there, it was thought that it was most unlikely that the price of land would be cheaper in the future."

It is also clear that the board took time to deliberate before each purchase, as Mr. Sivapragasam went on to say:—

"Normally, when any land is offered to the board, and it considers it suitable, the board's architect would be instructed to view the land and submit his report to the board as to its suitability for its purpose. If the report said the land was suitable then the Treasury valuer would be requested to value it. After the valuation has been received, a memorandum would be put up by the board to the building committee, and when this committee has considered the matter, it would be put to the full board and a decision made. At the same time, we would get a valuation from the collector before it goes to the full board. This procedure was followed in Lots 2187, 826 and 801."

Consequently I do not think that, of any of the above sales, it could truly be said that the board were not perfectly willing purchasers. How anybody could have stampeded the hard-headed building committee, and then the full board, into a decision against their will ("compulsion" is the word) is beyond my comprehension. Wherein, one might ask, lay this so-called element of compulsion? Who exercised this power on the board? Was urgent necessity, in truth, the justification for each purchase? Even so, the board could have had ready recourse to the provisions of section 19, above quoted. In my judgment, therefore, the sales of Lots 801, 2187 and 826 were rejected on grounds too flimsy to enlist my support. On the point of law, I know of no authority for the proposition that any price paid with reluctance becomes a payment made under compulsion. Perhaps it might have been thought that this construction derives from paragraphs (a) and (b) of section 3 of the First Schedule to the Land Acquisition Act which reads:—

"In determining the amount of compensation to be awarded for any scheduled land acquired under this Act the following matters shall not be taken into consideration:

(a) the degree of urgency which has led to the acquisition;

(b) any disinclination of the person interested to part with the land acquired;"

The answer is that Lots 801, 2187 and 826 were not compulsorily acquired under the Act and the principles of compensation set out in the said Schedule had no application whatsoever to voluntary purchase of land.

To sum up, the judge, having discarded as valid comparables the appellant's own purchase of Lot 922, the sales by other landowners of Lots 2187, 826 and 801 to the board and Lot 1309 to the Shell Company, was left without any comparable sales to assist him in his search for an answer. It would appear that he had leaned too heavily on the opinion of the valuer, as did the assessors also, in rejecting those sales. Hence, in default of any comparable sales, it became "necessary to fall back on some other method of determining the market value" — and there was none left but the residual method favoured by the Treasury valuer which the judge accepted *in toto*. With respect I disagree. It is true, as Lord Wilberforce said in *Aik Hoe & Co. Ltd. v. Superintendent of Lands & Surveys*,[2] that there are not two clear-cut and alternative methods of valuation, each with its own separate rules. Provided both methods are correctly applied, approximately the same results should be obtained. Consequently where the comparative method results in land being valued at 46 cents per square foot and such valuation is admitted or proved to be erroneous, the residual method cannot be right which fixes the same price. It goes without saying, therefore, that the admission of error by the collector was as fatal to an assessment by the residual method as it proved to be to the alternative method of comparison with other sales.

Having reached this conclusion, I am bound to hold that the collector's award and the judgment affirming it should be set aside. It now remains for this court to do the best it can to arrive at a just assessment of the market value. For this purpose the evidence on the record appears to me quite sufficient.

In the first place, the collector had admitted that the sale of Lot 922 afforded a valid comparison. He conceded that Lot 1685 was more valuable: "If in June 1966 Lot 922 is valued at 90 cents a square foot, Lot 1685 would cost more". Accordingly Lot 1685 should have a market value in excess of 90 cents.

In the second place, there is evidence of the offers made by the appellant to the board — first at $1.30, reduced to $1.10 and finally at $1.30 — which was evidence of willingness to sell at such prices.

In the third place, there are the sales of Lot 1309 to the Shell Company and Lots 801, 2187 and 826 to the board, which indicate a steady trend of rising prices resulting from

the establishment of the two refineries and the power station. As between Lots 2187 and 826, the former was undoubtedly superior in all respects, yet the same price was paid by the same purchaser for the inferior land purchased a year after the other, at $35,000 per acre.

Fourthly, as between town and agricultural land, conversion of the latter requires payment of a premium of $5,000 per acre. Consequently this advantage of Lot 1685 over Lots 2187 and 826 should be taken into account, as well as the presence of numerous squatters on Lot 826 which would entail further expense for their removal. Lot 1685 had only some piggeries. In comparison with Lots 2187 and 826, Lot 1685 has vastly superior amenities and potentialities. Lot 1685 possesses 950 feet of road frontage; Lot 2187 has less than half that much along a secondary access road only, while Lot 826 has none whatever. Lot 1685, being land facing the sea in a seaside resort, is clearly much more attractive for a housing estate than the others which lack this amenity.

An appeal being a rehearing, this court "has power to draw inferences of fact and give any judgment which ought to have been given or made" — per Lord Wilberforce in *Aik Hoe's* case. The various sales abovementioned are the primary facts from which this court may make legitimate deductions, while reviewing the inferences and conclusions of the High Court. The opinions of the assessors in this case were demonstrably erroneous, because neither of them paid any heed to the sale of Lot 922 and the collector's admission of comparative values. On the evidence generally, having regard to the sufficiency of relevant primary facts available, I do not think that any question of the relative credibility of witnesses can turn the scale.

After careful consideration of all the evidence on the record I am of opinion that the proper market value of Lot 1685 at the relevant date should be $1.10 per square foot. In arriving at this figure I have carefully considered the appellant's own offers. They may be regarded as trial balloons. He probably would have accepted $1 in 1965. A rise of 10 per cent by June 1966 should take sufficient account of improved values over the space of 10 months since August 1965.

Accordingly my award for 179,946 square feet comprised in Lot 1685, at $1.10 per square foot, should be $197,940, together with $5,000 being the value of the house thereon, making a total of $202,940. I will hear counsel as to the question of interest and costs.

Azmi L.P. and Suffian F.J. concurred.

Order accordingly.

Solicitors: *Lee Boon Peng.*

THE "SIMBA"

OWNERS OF "SIMBA" v. ZIM ISRAEL NAVIGATION

[F.C. (Wee Chong Jin C.J., Chua & Winslow JJ.) September 30, 1969]

[Singapore—Federal Court Civil Appeal No. Y 3 of 1969]

Practice and Procedure — Admiralty suit in rem — Whether Admiralty Procedure Rules, 1895, made in pursuance of the Colonial Courts of Admiralty Act, 1890 still apply in Singapore — Whether rules are adequate for purposes of exercising the jurisdiction conferred by s. 4(4) of the Courts (Admiralty Jurisdiction) Ordinance, 1961 — Whether English R.S.C., O. 75 r. 5 should be followed — Setting aside warrant of arrest — Defective affidavit.

Shipping — Arrest of ship — Adequacy of affidavit to lead warrant — Whether Singapore Rules apply.

Courts (Admiralty Jurisdiction) Ordinance, 1961.

Singapore (Consequential Provisions) Order in Council, 1959.

The plaintiffs in an action *in rem* for a claim which fell under section 3(1)(g) or section 3(1)(h) of the Courts (Admiralty Jurisdiction) Ordinance, 1961 took out a writ against the defendants and applied and obtained a warrant for the arrest of the motor vessel "*Simba*". The evidence leading the warrant of arrest complied with rule 16 of the Admiralty Procedure Rules, 1895 in pursuance of the Colonial Courts of Admiralty Act, 1890 which lays down the procedure to be followed and what facts should be disclosed in the evidence.

The defendants moved to set aside the writ and all subsequent proceedings including the warrant of arrest on the ground that the evidence leading the warrant of arrest was bad for non-compliance with Order 75 rule 5 of the Rules of the Supreme Court of England as applied by Preliminary Rule 2 of the Rules of the Supreme Court, 1934 in that (a) the port to which the said vessel belonged was not named and (b) the requirements of the said Order 75 rule 5(8) (a), (b) and (c) had not been complied with and/or the said evidence disclosed no facts upon which the exercise of the jurisdiction conferred upon the court by section 4 of the Courts (Admiralty Jurisdiction) Ordinance, 1961 could be founded.

Prior to the hearing of the motion the vessel had been released upon the defendants furnishing satisfactory security.

At first instance the motion was dismissed with costs. The defendants appealed to the Federal Court.

Held, dismissing the appeal: (1) the Admiralty Procedure Rules, 1895 made in pursuance of the Colonial Courts Admiralty Act, 1890 still applied in Singapore by virtue of section 4 of the Singapore (Consequential Provisions) Order in Council 1959 which provided for the continued application of the existing laws in Singapore immediately before June 3, 1959;

(2) the Admiralty Procedure Rules were adequate for the purpose of the exercise of the existing jurisdiction *in rem* conferred by section 4(4) of the Courts (Admiralty Jurisdiction) Ordinance, 1961;

(3) since the warrant of arrest had complied with the Admiralty Procedure Rules and it was clear from the writ and the warrant of arrest the port to which the vessel in question belonged the appeal must be dismissed with costs.

FEDERAL COURT

A.P. Godwin for the appellants.

K.C. O'Connor for the respondents.